

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEAN PAUL STEPHENS

Plaintiff,

vs.

PEOPLE OF THE STATE OF  
CALIFORNIA,

Defendant.

No. C 10-2822 JSW (PR)

**ORDER DISMISSING COMPLAINT  
WITHOUT PREJUDICE**

**INTRODUCTION**

Petitioner, a prisoner of the State of California currently incarcerated at Corcoran State Prison in Corcoran, California, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. The complaint is somewhat incomprehensible, but apparently challenges certain aspects of Plaintiff's criminal trial in Marin County, California. This order reviews the complaint pursuant to 28 U.S.C. § 1915A and dismisses the complaint for the reasons set forth below. Plaintiff's application to proceed *in forma pauperis* GRANTED in a separate order filed simultaneously.

**DISCUSSION**

Plaintiff's complaint is directed to Plaintiff's prosecution in Marin County where he "went to a jury trial" on a "459 P.C. charge" in 1989. Plaintiff contends he should have been convicted on misdemeanor charges.



1 but ultimately unavailing one. *See id.* at 324-28. A claim that is totally  
2 incomprehensible may be dismissed as frivolous as it is without an arguable basis in law.  
3 *See Jackson v. Arizona*, 885 F.2d 639, 641 (9th Cir. 1989). The Court is unable to  
4 ascertain a cognizable federal claim from Plaintiff's incomprehensible civil rights  
5 complaint.

6 To the extent that Plaintiff seeks to challenge the circumstances underlying his  
7 criminal conviction, he has improperly filed his claim as a civil rights action. A district  
8 court may construe a habeas petition by a prisoner attacking the conditions of his  
9 confinement as a civil rights action under 42 U.S.C. § 1983. *Wilwording v. Swenson*,  
10 404 U.S. 249, 251 (1971). The opposite is not true, however: a civil rights complaint  
11 seeking habeas relief should be dismissed without prejudice to bringing it as a petition  
12 for writ of habeas corpus. *Trimble v. City of Santa Rosa*, 49 F.3d 583, 586 (9th Cir.  
13 1995).

14 Any claim by a prisoner attacking the validity or duration of his confinement must  
15 be brought under the habeas sections of Title 28 of the United States Code. *Calderon v.*  
16 *Ashmus*, 523 U.S. 740, 747 (1998); *Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). A  
17 prisoner must bring a habeas petition if the nature of his claim is such that it would  
18 necessarily imply the invalidity of his conviction or continuing confinement. *Bogovich*  
19 *v. Sandoval*, 189 F.3d 999, 1002 (9th Cir. 1999) (ADA claim); *Butterfield v. Bail*, 120  
20 F.3d 1023, 1024 (9th Cir. 1997) (§ 1983 claim). In this case, it appears that the  
21 substance of Plaintiff's claim is an attack on the validity of his confinement such that  
22 they necessarily imply the invalidity of his continuing confinement. To the extent that  
23 Plaintiff seeks to challenge his conviction in this manner, they are DISMISSED without  
24 prejudice. As such, the entire complaint fails to state a claim for relief and is dismissed.


### 25 CONCLUSION

26 Based on the foregoing, this action is DISMISSED. The Clerk of Court shall  
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28

1 close the file and enter judgment in accordance with this order.

2 IT IS SO ORDERED.

3 DATED: October 13, 2010

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5 JEFFREY S. WHITE  
6 United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

DEAN PAUL STEPHENS,  
Plaintiff,

Case Number: CV10-02822 JSW

**CERTIFICATE OF SERVICE**

v.

PEOPLE OF THE STATE OF CALIFORNIA  
et al,


Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 13, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Dean Paul Stephens  
E39949, 69822  
Marin County Jail  
13 Peter Behr Drive  
San Rafael, CA 94903

Dated: October 13, 2010

  
Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk